

RECORDATION NO. 8385-E
OCT 15 1976 11 25 AM
INTERSTATE COMMERCE COMMISSION



RECORDATION NO. 8385-F
OCT 15 1976 11 25 AM
INTERSTATE COMMERCE COMMISSION

October 13, 1976

The Honorable Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RE: Conditional Sale Agreement made as of June 22,
1976, filed with the ICC on June 28, 1976, at
11:20 a.m. and assigned recordation number 8385.

Dear Mr. Oswald:

Enclosed for filing with the Interstate Commerce Commission
are ten executed Counterparts of the following:

- (1) An Assignment of Sublease dated as of June 22, 1976,
assigning to First Security Bank of Utah, N.A., 79
South Main Street, Salt Lake City, Utah, 84110, a
national banking association, not in its individual
capacity but acting solely as trustee under a Trust
Agreement dated as of June 22, 1976 with FMC
Finance Corporation, 200 East Randolph Drive,
Chicago, Illinois, 60601 (the "Trustee"), SSI Rail
Corp.'s interest in its lease of railroad equipment
with the Apache Railway Company dated June 1,
1976, as and only to the extent that such lease re-
lates to the below referenced boxcars (the "Sublease").
A copy of the Sublease is attached to the Assignment.
- (2) A Subsequent Assignment of Sublease dated as of
July 30, 1976, assigning to Manufacturer's Hanover
Trust Company, 350 Park Avenue, New York, New
York, 10022, the Trustee's interest in the Sublease.

.../2

Counterpart to Gene H. Thornhill

Mr. Oswald

October 13, 1976
Page 2.

The above documents cover the following railroad equipment with the A.A.R. mechanical designation of "XM."

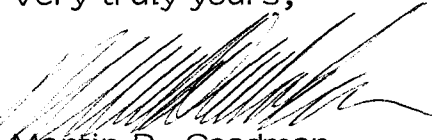
- 100 70-ton boxcars built by FMC Corporation and numbered APA 1850 through 1949 inclusive.
- 100 100-ton boxcars built by FMC Corporation and numbered APA 1700 through 1799 inclusive.

Each boxcar is plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height as follows: "Owned by a Company under a Security Agreement filed under the Interstate Commerce Act, Section 20."

Also enclosed is SSI's check in the sum of \$20.00, payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return all additional copies of the enclosed counterparts not required by the Interstate Commerce Commission to Allen H. Harrison, Jr. of Wilmer, Cutler & Pickering, who will be delivering this letter on our behalf.

Very truly yours,



Martin D. Goodman
Secretary

MDG:md
Enc.

Interstate Commerce Commission

Washington, D.C. 20423


October 15th 1976

OFFICE OF THE SECRETARY

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **10/15/76** at **11:35 a.m.** , and assigned recordation number(s) **8385-E & 8385-F**

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

OCT 1 1976 11 44 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF SUBLEASE

ASSIGNMENT dated as of June 22, 1976 by SSI RAIL CORP., a Delaware corporation (hereinafter called "Assignor"), to FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation (said bank, so acting, being hereinafter called "Assignee").

W I T N E S S E T H :

WHEREAS, FMC Corporation (hereinafter called "Builder") and Assignee have entered into a Conditional Sale Agreement dated as of June 22, 1976, as amended and restated as of July 30, 1976 (said Agreement, as so amended and restated, being hereinafter called the "Conditional Sale Agreement"), providing for the construction, sale and delivery by Builder to Assignee and the purchase by Assignee from Builder of 200 railroad boxcars bearing the identification numbers set forth in Schedule A hereto (said 200 numbered boxcars being hereinafter called the "Equipment"); and

WHEREAS, Assignor and Assignee have entered into a Lease of Railroad Equipment dated as of June 22, 1976, providing for the lease of the Equipment by Assignee to Assignor; and

WHEREAS, Assignor and The Apache Railway Co. (hereinafter called "Sublessee") have entered into a Lease Agreement dated as of June 1, 1976, providing for the initial leasing of 250 railroad boxcars, including the 200 boxcars comprising the Equipment, by Assignor to Sublessee; and

WHEREAS, Builder and Manufacturers Hanover Trust Company (hereinafter called "MHTCo.") are entering into an Agreement and Assignment dated as of July 30, 1976 (hereinafter called the "Agreement and Assignment"), providing for the assignment by Builder to MHTCo. of certain of the rights of Builder under the Conditional Sale Agreement; and

WHEREAS, MHTCO.'s obligation to execute and deliver the Agreement and Assignment and to pay Builder the consideration therefor is conditioned upon, among other things, the execution and delivery by Assignor of this Assignment;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign, transfer and set over to Assignee and its successors and assigns all the right, title and interest of Assignor in, to and under, and does hereby grant to Assignee and its successors and assigns a security interest in, all of the following:

The Lease Agreement dated as of June 1, 1976 between Assignor and Sublessee (hereinafter called the "Sublease"), as and only to the extent that the Sublease relates to the Equipment, and all rents, issues, profits and proceeds thereof, to the extent that the same are payable with respect to any unit of the Equipment (provided, however, that whenever the amount of any payment due to Assignor under the Sublease is calculated on an aggregate basis for all boxcars subleased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to the Equipment), including, without limitation, (i) to the extent aforesaid, all moneys due and to become due to Assignor under or in connection with the Sublease, whether as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues, payments in connection with damage to or destruction of any unit of the Equipment, claims for damages or otherwise, (ii) all rights and powers of Assignor under the Sublease to exercise any option, to consent or make any waiver or agreement or to take any other action with respect to any unit of the Equipment, and (iii) all rights and claims of Assignor to insurance proceeds with respect to any unit of the Equipment (all of the foregoing being herein collectively called the "Collateral"). The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of boxcars comprising the Equipment and the denominator of which shall be the aggregate number of boxcars at the time leased under the Sublease.

1. This Assignment is given as collateral security for the payment by Assignor to Assignee of all amounts payable by Assignor under the Lease and the performance by Assignor of all of its obligations contained therein (all of such amounts and obligations being herein collectively called the "Obligations").

2. Assignor hereby irrevocably authorizes Assignee, at Assignee's discretion upon the occurrence of an Event of Default under the Lease, to direct Sublessee during the continuance of such Event of Default to pay all rent and all other amounts due or to become due under or in connection with the Sublease, to the extent assigned by Assignor hereunder, directly to Assignee or to such other person as Assignee may from time to time designate in writing. If, after any such direction shall have been given by Assignee to Sublessee, Assignor shall receive during the continuance of such Event of Default any such payments under or in connection with the Sublease or otherwise assigned hereunder, such payments shall be held by Assignor in trust for Assignee, shall be segregated from other funds of Assignor and shall, forthwith upon receipt by Assignor, be turned over to Assignee or its agent in the same form as received by Assignor (except for the endorsement of Assignor when required).

3. All moneys received by Assignee by reason of this Assignment (whether from Sublessee, Assignor or otherwise) shall be held by Assignee and applied to the payment of the Obligations as and when they become due and payable, whether by maturity, prepayment, acceleration or otherwise; provided, however, that so long as no Event of Default under the Lease, or event which with notice or lapse of time or both would constitute such an Event of Default, has occurred and is continuing, any moneys so received by Assignee shall be paid over to Assignor, free of this Assignment, not later than one business day after receipt thereof by Assignee, by transfer of funds immediately available to Assignor. Upon the occurrence of an Event of Default under the Lease, Assignee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State of Utah.

4. Assignor hereby represents and warrants to Assignee that (i) the Sublease is in full force and effect and enforceable against Sublessee in accordance with its terms, and neither Assignor nor Sublessee is in default thereunder; (ii) Assignor has not heretofore assigned or otherwise disposed of or encumbered any of its right, title or interest in, to or under the Sublease or any moneys due or to become due thereunder or by reason thereof or any other moneys subject to this Assignment; and (iii) Assignor has full right, power and authority to transfer to Assignee absolute title to Assignor's right, title and interest in, to and under the Sublease and in and to all such moneys, as and to the extent hereby assigned by it.

5. Assignor hereby covenants that it will not, without the prior written consent of Assignee, amend, modify or otherwise change any term of the Sublease and that it will not take any other action in connection therewith that would have the effect of impairing the value of Assignee's interest therein or rights thereunder.

6. Assignor further covenants that it will not, so long as this Assignment shall remain in effect, create or permit to exist any lien, pledge, assignment, charge, encumbrance or security interest on or with respect to any of the rights and interests hereby assigned by it, except in favor of Assignee, its successors or assigns.

7. It is expressly agreed that, anything herein contained to the contrary notwithstanding, (i) Assignor shall remain liable to perform and observe all of its obligations and agreements under the Sublease, (ii) the obligations and agreements of Assignor under the Sublease may be performed by Assignee or its nominee or agent without releasing Assignor therefrom, and (iii) Assignee shall not have any obligation or liability under the Sublease by reason of, or arising out of, this Assignment or be obligated to perform any of the obligations or agreements of Assignor thereunder or to make any payment or to make any inquiry of the nature or sufficiency of any payment received by Assignor or Assignee or its agent or to present or file any claim or to take any other action to collect or enforce any payment assigned hereunder or to which Assignee may be entitled hereunder at any time or times.

8. Assignor hereby, but effective only upon the occurrence of an Event of Default under the Lease, constitutes Assignee and its successors and assigns Assignor's true and lawful attorneys, irrevocably, with full power and authority (in the name of Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all rent and other moneys and any and all claims for rent and other amounts due and to become due at any time under, or arising out of, the Sublease, to the extent that the same are assigned by Assignor hereunder, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Assignee may deem to be necessary or advisable in the premises.

9. Assignor agrees that at any time and from time to time, upon the written request of Assignee, Assignor will promptly and duly execute, deliver and record or file any and all such further instruments and documents as Assignee may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation, the execution, delivery and filing of financing statements under the Uniform Commercial Code in such jurisdictions as Assignee may now or hereafter from time to time request. Assignor hereby also authorizes Assignee to file any such financing statements without the signature of Assignor to the extent permitted by applicable law.

10. All rights, powers and remedies granted to Assignee hereunder and under the Lease shall be cumulative, may be exercised singly or concurrently and shall not be exclusive of any rights or remedies provided by law. This Assignment may not be changed orally and shall be governed by and construed and interpreted in accordance with the laws of the State of Utah.

11. Although for convenience this Assignment is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

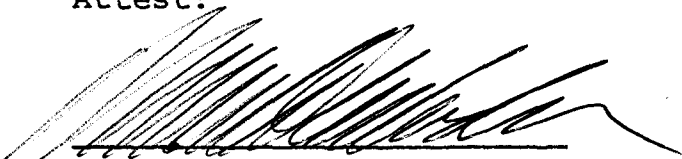
IN WITNESS WHEREOF, the undersigned has caused these presents to be properly executed as of the day and year first above written.

SSI RAIL CORP.

By 

[Corporate Seal]

Attest:



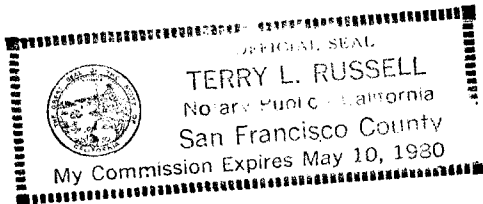
SCHEDULE A TO ASSIGNMENT OF SUBLEASE

<u>Type</u>	<u>Quantity</u>	<u>Assignor's or Sublessee's Road Numbers (Both Inclusive)</u>
70-ton box cars (FMC Corporation Specification #17774, revision #3 dated June 9, 1976)	100	APA 1850-1949 *
100-ton box cars (FMC Corporation Specification #17775)	100	APA 1700-1799 *

* Road Number of The Apache Railway Co.

STATE OF CALIFORNIA)
 : SS.:
CITY AND COUNTY OF SAN FRANCISCO)

On this 4th day of August, 1976,
before me personally appeared Patrick B. McManus,
to me personally known, who, being by me duly sworn,
says that he is the President of SSI RAIL CORP., that
one of the seals affixed to the foregoing instrument is
the seal of said corporation, that said instrument was
signed and sealed on behalf of said corporation by
authority of its Board of Directors, and he acknowledged
that the execution of the foregoing instrument was the
free act and deed of said corporation.



Terry L. Russell
Notary Public

[Notarial Seal]

My Commission Expires:

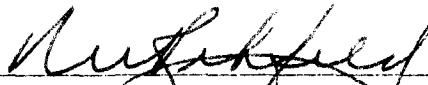
CONSENT TO ASSIGNMENT OF SUBLEASE

The undersigned, The Apache Railway Co. ("Apache"), hereby acknowledges notice of and consents to the foregoing Assignment and agrees that upon receipt of written direction from the Assignee thereunder so to do, it will make payment of moneys due and to become due from it under or in connection with the Sublease referred to in said Assignment, as and to the extent that such moneys are assigned thereby, directly to said Assignee or to such other person as said Assignee may from time to time designate to Apache in writing; provided that, the foregoing consent and agreement is given and made upon the express condition that none of the rights or interests of Apache under, pursuant to or in connection with said Sublease shall be affected in any manner by, nor shall SSI Rail Corp. be released or relieved of or from any of its duties or obligations under said Sublease as a result of, the Assignment or the above consent and agreement.

Dated: August 31, 1976

THE APACHE RAILWAY CO.

[Corporate Seal]

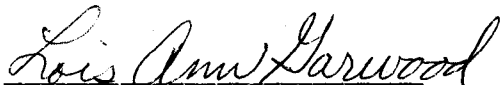
By 
R. W. Rehfeld, Vice President

ATTEST:


R. P. Elder, Assistant Secretary

STATE OF ARIZONA)
 : ss.:
COUNTY OF MARICOPA)

On this 31st day of August, 1976, before me personally appeared R. W. Rehfeld, to me personally know, who, being by me duly sworn, says that he is the Vice President of THE APACHE RAILWAY CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Lois Ann Garwood
Lois Ann Garwood

(Notarial Seal)

My Commission Expires March 5, 1980.



LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this day of, 197. , between SSI RAIL CORP., a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("SSI") as Lessor and The Apache Railway Co., Drawer E, Snowflake, AZ a Arizona corporation (the "Lessee"), as Lessee.

1. Scope of Agreement

A. SSI agrees to lease to Lessee, and Lessee agrees to lease from SSI, a minimum of one hundred (100) boxcars of the types and descriptions as set forth in any lease schedules executed by the parties concurrently herewith or from time to time hereafter and made a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Boxcars". The word "Schedule" as used herein includes the Schedule executed concurrently herewith and all additional Schedules and amendments thereto ~~whether for boxcars or other railroad equipment~~, each of which when signed by both parties shall be a part of this Agreement.

B. It is the intent of the parties of this Agreement that SSI shall at all times be and remain the lessor of all scheduled boxcars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the boxcars. The term of a lease with respect to *** shall be for fifteen (15) years commencing upon the date of delivery of ** as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, the lease term with respect to the / shall be automatically extended for not more than five consecutive periods of twelve months; provided, however, that SSI or Lessee may by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term for any scheduled equipment terminate this Agreement as to any or all of the boxcars described in any Schedule. /boxcar desc in ex Sch-

3. Supply Provisions

A. SSI will inspect each Boxcar tendered by the manufacturer for delivery to Lessee. If the Boxcar conforms to the specifications of the equipment ordered by SSI* and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, SSI will accept delivery thereof ~~at the manufacturer's facility~~ and shall notify Lessee in writing of such acceptance. The Boxcars shall be deemed delivered to Lessee upon acceptance by SSI. The Boxcars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance by SSI as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, SSI can neither control nor determine when the Boxcars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars leased hereunder, Lessee agrees to pay to SSI the rental charges set forth in this Agreement. To move the Boxcars to Lessee's railroad line and insure optimal use of the Boxcars after the first loading of freight for each Boxcar on the railroad line of Lessee (the "initial loading"), SSI agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee

*** The boxcars described on each Schedule

** The last boxcar on each Schedule

* As approved by the Apache Railway Company

and SSI, to issue movement orders with respect to such Boxcars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease one or more type of Boxcar, it shall not lease boxcars from any other party unless it shall have leased the minimum 100 Boxcars required by this Agreement. Once the minimum 100 Boxcars shall have been leased by Lessee, it shall then not lease boxcars from any other party unless it shall have given SSI at least three (3) months' prior written notice of its desire to lease boxcars similar to the type on lease and SSI shall then have the opportunity to lease such boxcars to Lessee subject to the terms and conditions of this Agreement and manufacturer's delivery schedules and at terms not less favorable to Lessee than that offered by such other parties. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if SSI cannot equal the lease terms offered by such other parties. Notwithstanding the purchase of boxcars or the leasing or direct interchange of boxcars from other parties, Lessee shall give preference to SSI and shall load* the Boxcars leased from SSI prior to loading boxcars purchased by Lessee subsequent to the date of this Agreement or leased from such other parties or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Additional Boxcars may be leased from SSI by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Boxcars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by SSI and Lessee.

4. Railroad Markings and Record Keeping

A. SSI agrees that on or before delivery of the Boxcars to Lessee, the Boxcars may be lettered, in addition to the logo of SSI and the railroad markings of Lessee, with the name and/or other insignia used by Lessee. Such name or insignia shall comply with all applicable regulations and shall be affixed to the Boxcars in the space directly above Lessee's reporting marks, with a width not greater than seven feet.

SSI shall, at its sole cost and expense,

B. During the term of this Agreement/prepare all documents for Lessee's signature and filing relating to the registration, maintenance and record keeping functions normally performed by Lessee with respect to the Boxcars. Such matters shall include but are not limited to the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Boxcars including/an application for relief from AAR Car Service Rules 1 and 2; (ii) registration for each Boxcar in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Boxcars.

C. Each and every Boxcar leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. SSI shall, on behalf of Lessee/perform all record keeping functions related to the use of the Boxcars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Boxcars shall be addressed to Lessee at such address as SSI shall select.

D. All record keeping performed by SSI hereunder and all record of payments, charges and correspondence related to Scheduled Boxcars shall be separately recorded and maintained by SSI in a form suitable for reasonable inspection by Lessee from time to time during regular SSI business hours. Lessee shall supply SSI with such reports regarding the use of Boxcars by Lessee on its railroad line as SSI may reasonably request.

5. Maintenance, Taxes and Insurance

A. SSI will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Boxcar during its lease term and any extension thereof, including but not limited

* For purposes of this Section "load" shall mean that Lessee shall at its interchange point in Holbrook, Arizona, select the Boxcars available for moving onto Lessee's line in preference to similarly available boxcars

to repairs, maintenance and servicing unless the same was occasioned by the fault of Lessee while a Boxcar was in the physical possession of Lessee. Lessee shall be responsible to inspect the safety of equipment interchanged to it to insure that such equipment is in good working order and condition and shall be liable to SSI for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to SSI for and during the lease term of each Boxcar all of its right, title and interest in any warranty in respect to the Boxcars. All claims or actions on any warranty so assigned shall be made and prosecuted by SSI at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be made payable to SSI. All proceeds from such recovery shall be used to repair or replace the Boxcars.

B. Lessee may make running repairs to facilitate continued immediate use of a Boxcar, but shall not otherwise make any repairs, alterations, improvements or additions to the Boxcars without SSI's prior written consent. If Lessee makes an alteration to any Boxcar without SSI's prior written consent, Lessee shall be liable to SSI for any revenues lost due to such alteration. Title to any such alteration, improvement or addition occurring in the course of or as a result of normal and customary maintenance shall be and remain with SSI.

C. SSI shall make or cause to be made such inspections of, and maintenance and repairs to, the Boxcars as may be required. Upon request of SSI, Lessee shall perform any necessary maintenance and repairs to Boxcars on Lessee's railroad tracks as may be reasonably requested by SSI. SSI shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Boxcars in good operating condition throughout the term of the lease of such Boxcars.

D. Lessee will at all times while this Agreement is in effect be responsible for the Boxcars while they are on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for cars not owned by Lessee which are operating on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Boxcars by either obtaining insurance or maintaining a self insurance program which conforms to sound actuarial principles. If Lessee elects to carry insurance, it shall furnish SSI concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months, with a certificate of insurance signed by an independent insurance broker with respect to the insurance carried on the Boxcars. All insurance shall be taken out in the name of Lessee and SSI (or its assignee) as their interests may appear.

E. SSI agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Boxcar and on the lease, delivery or operation thereof which may be accrued, levied, assessed or imposed during the lease term or which remain unpaid as of the date of delivery of such Boxcar to Lessee, except taxes on net income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. SSI shall forward to Lessee all sales and use taxes received by it on behalf of Lessee. SSI and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Boxcars. SSI shall review all tax returns prior to filing.

6. Rental Charges

A. Lessee agrees to pay the following rental charges to SSI for the use of SSI's Boxcars:

(i) SSI shall receive all of the mileage charges and car hire revenues (including both straight and incentive per diem) paid to Lessee by other railroad companies if the utilization of all of the Boxcars on an aggregate basis for each calendar year shall be equal to or less than 90 per cent. For the purpose of this Agreement, utilization of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that per diem is earned on the Boxcars, commencing from the initial loading, and the denominator of which is the aggregate number of days in each year that the Boxcars are on lease to Lessee, commencing from the initial loading. In addition, SSI will receive, as additional rental, but only to the extent actually paid to Lessee, all revenues earned by the Boxcars prior to their initial loading.

(ii) In the event the utilization exceeds 90 per cent in any calendar year, SSI shall receive an amount equal to the SSI Base Rental plus an amount equal to one-half of the revenues earned in excess of the SSI Base Rental. For the purpose of this Agreement, SSI Base Rental shall be an amount equal to the total mileage charges and car hire revenues for the calendar year multiplied by a fraction, the numerator of which is 90 per cent and the denominator of which is the utilization for such calendar year. (The above determination of SSI Base Rental insures that Lessee will, if the utilization is greater than 90 per cent in any calendar year, receive one-half of all the mileage and car hire revenues earned by Lessee in excess of the SSI Base Rental.)

and shall be paid (iii) The rental charges payable to SSI by Lessee shall be paid ^{only} ^{actually} from the monies received by Lessee in the following order until SSI receives the amounts due it pursuant to this Section 6: (1) incentive car hire payments; (2) straight car hire payments and (3) mileage charges.

(iv) In the event damage or destruction of a Boxcar has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof is received by SSI, said damaged or destroyed Boxcar will be removed from this Agreement as of the date that payment of car hire revenues ceased.

B. The calculations required above shall be made within three months after the end of each calendar year. However, to enable SSI to meet its financial commitments, SSI may, prior to such calculations retain 93 per cent of the revenues received by it on behalf of Lessee. However, since the parties desire to determine on a quarterly basis the approximate amount of the rental payment due SSI, SSI shall within three months after the end of each calendar quarter, calculate on a quarterly basis rather than a yearly basis, the amount due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

C. In the event the utilization in any calendar quarter is less than 87.5 per cent, SSI may, at its option and upon not less than 30 days prior written notice to Lessee, terminate this Agreement as to such number of Boxcars as SSI shall determine. RIDER 4A

and upon not less than 30 days prior written notice to Lessee,
D. SSI may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive per diem for Boxcars on an annual basis to three months or less without a corresponding increase in straight per diem or other revenues available to both SSI and Lessee at least equal in amount to such reduction or (2) determine that Lessee may not apply its net credit balance from incentive per diem settlements in payment of the rental charges set forth in this section. RIDER 4B

RIDER 4C

F. If any Boxcar remains on Lessee's railroad tracks for more than seven days, SSI may, at its option and upon not less than 24 hours prior written notice, terminate this Agreement as to such Boxcar and withdraw such Boxcar from Lessee's railroad tracks, except when such Boxcar is awaiting its initial loading. If any such Boxcar remains on Lessee's railroad tracks more than seven days because Lessee has not given preference to SSI's Boxcars as specified in Section 3B, Lessee shall be liable to SSI for an amount equal to the car hire revenues Lessee would have earned if such Boxcars were in the physical possession and use of another railroad for the entire period after the expiration of seven days.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Agree-

RIDER 4A (addition to Section CC)

provided, however, that within ten (10) days of the receipt of such notice, Lessee may prevent such termination by paying SSI an amount sufficient to make up the difference between the actual and 87.5 percent utilization.

RIDER 4B (addition to Section D)

In the event of such termination, Lessee shall have a right of first refusal on any sale or leasing of the Boxcars, or any of them. Such right shall be exercised as follows: (1) SSI shall provide Lessee with the form of lease or sale transaction proposed, and (2) within thirty (30) days thereafter Lessee shall notify SSI if it elects to meet the terms of such proposed transaction.

RIDER 4C (addition to Section 6)

E. SSI or Lessee each may, at its option and upon not less than 30 days written notice to the other party, terminate this Agreement if any rules or regulations shall (1) impose a requirement that the Lessee, in order to continue to meet its obligations under this Agreement in a lawful manner, spend funds not earned by the Boxcars or (2) prohibit, restrict or impose any condition upon the right or ability of Lessee to apply all or any part of the mileage charges and car hire revenue charges (including both straight and incentive per diem) paid to Lessee by other railroad companies with respect to the Boxcars in payment of the rental charges payable to SSI under this Agreement except that if only the payment of a portion of such charges or revenues is so prohibited or restricted Lessee may not so terminate this Agreement if SSI elects, prior to the end of the thirty day notice period, to continue this Agreement in full force and effect as to that portion of such charges or revenues which is not prohibited or restricted.

ment and in the manner and to the extent Boxcars are customarily used in the railroad freight business. Lessee agrees that to the extent it has physical possession and can control use of the Boxcars, the Boxcars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either SSI or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

to the extent such is within Lessee's control,

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Boxcars or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

RIDER 5A

8. Default Remedies Upon Default

A. The occurrence of any of the following events shall be events of default:

(i) The nonpayment by Lessee of any sum required hereunder to be paid by Lessee within ten days after notice thereof; arising from events within Lessee's control

(ii) The default by Lessee under any other term, covenant, or condition of this Agreement which is not cured within ten days after notice thereof from SSI.

(iii) Any affirmative act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which prevents Lessee from operating

B. Upon the occurrence of any event of default, SSI may, at its option, terminate this Agreement and may

(i) Proceed by appropriate court action to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and Lessee agrees to bear SSI costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession of the Boxcars, whereupon all right and interest of Lessee in the Boxcars shall terminate; and thereupon SSI may by its agents enter upon any premises where the Boxcars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. SSI shall nevertheless have a right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

RIDER 5B

9. Termination

At the expiration or termination of this Agreement as to any Boxcars set forth on a Schedule attached hereto, Lessee will surrender possession of such Boxcars to SSI by delivering the same to SSI. The assembling, delivery, storage and transporting of the Boxcars shall be at the expense and risk of SSI. A Boxcar shall be deemed terminated and no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Boxcar and the placing thereon of such markings

Rider 5A (additions to Section 7)

C. SSI has advised Lessee that some or all of the Boxcars may be subject to leases and/or conditional sales agreements (hereinafter referred to collectively as "Financing Agreements") between SSI and third parties and SSI represents and covenants and agrees with Lessee that:

(i) SSI will faithfully abide by, perform, comply with and discharge each and every obligation, covenant and agreement which any Financing Agreement provides is to be observed and performed by SSI and will take or cause to be taken all such action as may be necessary to assure to Lessee the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Agreement;

(ii) If any event shall occur which constitutes, or which with notice or lapse of time or both would constitute, an event of default under any Financing Agreement, SSI will immediately upon becoming aware of such event's occurrence, notify Lessee in writing of the occurrence of such event, the nature thereof, the action required to remedy the default and the action which SSI proposes to take with respect thereto;

(iii) SSI agrees that it will use its best efforts to have included in each Financing Agreement a provision to the effect that whenever notice of a default is given to SSI with respect to any matter pursuant to the terms of such Financing Agreement a copy of such notice shall be sent to Lessee at its address specified herein by the same method and in the same manner as notice is given to SSI thereunder, and that if it is unable to obtain the inclusion of such a provision, it will promptly send a copy of each such notice to Lessee;

(iv) If an event of default shall occur under the provisions of any Financing Agreement, Lessee may, at its option but without being required to do so and after giving notice to SSI, take such action as it may deem appropriate to remedy such default and, in the event Lessee shall take any such action, SSI agrees to pay Lessee upon demand the amount of all costs and expenses paid or incurred by Lessee in connection with remedying such event of default. Any such amounts owing by SSI to Lessee may, at Lessee's option, be applied in payment of, or by way of off-set against, any rentals due or to become due to SSI by Lessee hereunder;

Rider 5A (addition to Section 7)

C.(v) The Boxcars are not and will not be subject to or covered by any Financing Agreement which also includes or covers other equipment or property of any kind.



RIDER 5B (additions to Section 8)

D. If Lessee is not in default in the performance of its obligations under this Agreement and it is deprived of the possession, use or quiet enjoyment of any of the Boxcars (by action of SSI or any party to a Financing Agreement) the Lessee shall have no further obligation for the payment of rentals or other amounts with respect to, or any other liabilities under this Agreement regarding such Boxcar except for amounts accrued or arising with respect thereto as a result of or growing out of acts, events, occurrences or possession of such Boxcar prior to termination of Lessee's possession and use thereof.

RIDER 5B (addition to paragraph B of Section 8 immediately following subparagraph [ii])

Notwithstanding any other provision hereof except for provision relating to the manner in which Boxcars are handled while in Lessee's possession, it is specifically understood and agreed that in no event shall the liability of Lessee for breach of this Agreement exceed an amount equal to seven (7) days per diem charges with respect to each Boxcar subject to this Agreement at the time of such breach.

SS may be designated by SSI, either, at the option of SSI, (1) upon delivery of such Boxcars to Lessee's railroad line subsequent to termination of such Boxcar's lease term or (2) removal and replacement of the markings by another railroad line which has physical possession of the Boxcar at the time of or subsequent to termination of the lease term as to such Boxcar.

(i) If such Boxcars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Boxcars and place thereon such markings as may be designated by SSI. After the removal and replacement of markings, Lessee shall use its best efforts to load such Boxcars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to ten days free storage on its railroad tracks for SSI or the subsequent lessee of any terminated Boxcar.

(ii) If such Boxcars are not on the railroad line of Lessee upon termination, all costs of assembling, delivering, storing, and transporting such Boxcars, except as provided above, to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by SSI.

10. Indemnities

SSI will defend, indemnify and hold harmless Lessee from and against (1) any and all loss or damage of or to the Boxcars, usual wear and tear excepted, unless occurring through the fault of Lessee while Lessee has physical possession of Boxcars and (2) any claim, cause of action, damage, liability, cost or expense (including legal fees and costs) which may be asserted against Lessee with respect to the Boxcars (unless occurring through the fault of Lessee) including without limitation the construction, purchase, delivery of the Boxcars to Lessee's railroad line, ownership, leasing or return of the Boxcars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by SSI or Lessee).

11. Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Boxcars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to SSI in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has during the years 1961-1968 neither leased nor purchased any boxcars.

12. Inspection

SSI shall at any time during normal business hours have the right to enter the premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify SSI of any accident connected with the malfunctioning or operation of the Boxcars including in such report the time, place and nature of the accident and the damage caused to property, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify SSI in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Boxcar. Lessee shall furnish to SSI promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC. /notice that

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except for an assignment of this Agreement by SSI to its parent or a subsidiary or affiliate or to a financial or banking institution as security for indebtedness incurred by SSI, neither SSI nor Lessee may, without the prior written consent of the other, assign this Lease Agreement or any of its rights hereunder or sublease the Boxcars to any party, and any purported assignment or sublease in violation hereof shall be void; provided that, no such assignment shall, without the express written consent of the other party, relieve any assigning part of any of its duties or obligations hereunder.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Boxcars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Boxcars except as a lessee only.

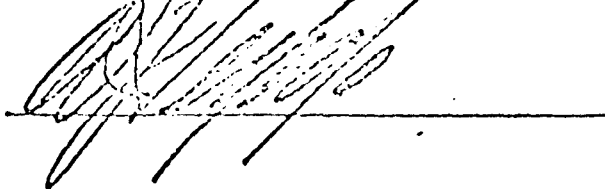
D. No failure or delay by SSI shall constitute a waiver or otherwise affect or impair any right, power or remedy available to SSI nor shall any waiver or indulgence by SSI or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States Mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first above written.

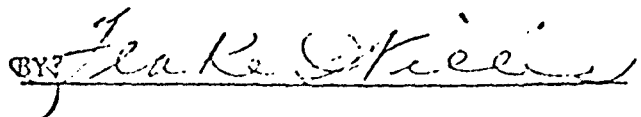
SSI RAIL



(TITLE)

DATE

THE APACHE RAILWAY CO.

BY 

Flake Willis, President

(TITLE)

DATE

May 24, 1976

SSI Rail Corp. hereby leases the following Boxcars to Apache Railway pur-
suant to that certain Lease Agreement dated as of 1976

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	General purpose boxcars - 100 Ton trucks - 20" sliding sill cushioning	1800-1899	50'6"	9'6"	12'11"	Double Plug 16'0" opening	100

THE APACHE RAILWAY CO.

SSI RAIL CORP.

BY:

Flake Willis

Flake Willis, President

(TITLE)

DATE:

DATE:

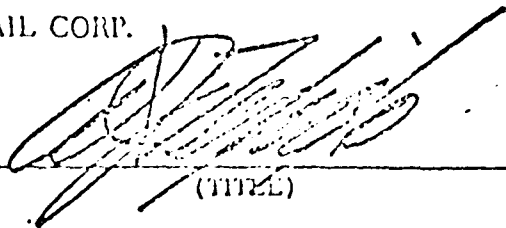
May 24, 1976

SSI Rail Corp. hereby leases the following Boxcars to Apache Railway pur-
suant to that certain Lease Agreement dated as of 1976

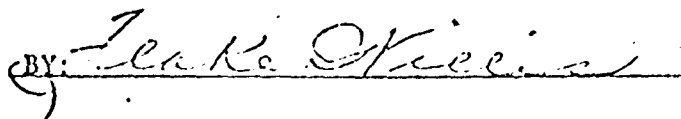
Model Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	Gen. purpose boxcars - 70 Ton trucks - 20" Sliding Sill cushioning	1900-2049	50'6"	9'6"	10'7"	Double Plug Doors 16'0" opening	150

THE APACHE RAILWAY CO.

SSI RAIL CORP.


(TITLE)

DATE:

BY: 

Flake Willis, President
(TITLE)

DATE:

May 24, 1976